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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,080	01/30/2002	Edward O. Kenaschuk	80694-502	5731

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ADE & COMPANY  
1700-360 MAIN STREET  
WINNIPEG, MB R3C3Z3  
CANADA

EXAMINER

MCELWAIN, ELIZABETH F

ART UNIT

PAPER NUMBER

1638

DATE MAILED: 03/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/059,080	KENASCHUK, EDWARD O.
	Examiner Elizabeth F. McElwain	Art Unit 1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 30 January 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-14 are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                    6) Other: \_\_\_\_\_

Claims 1-14 are pending and are subject to restriction.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9 and 13, drawn to a flax seed and plant having a linolenic acid content of greater than 65% of the total fatty acid content of the seed, and a method of using said plant by crossing it with another flax plant, classified in class 800, subclass 298, for example. (If this Group is elected, then applicant must also elect a single nucleotide sequence)
- II. Claim 10, drawn to oil, classified in class 426, subclass 601, for example.
- III. Claims 11 and 12, drawn to a product containing flax seed, classified in class 426, subclass 615, for example.
- IV. Claim 14, drawn to a product comprising meal, classified in class 426, subclass 655, for example.

The inventions are distinct, each from the other because:

The inventions of Groups I-IV are distinct products, which differ chemically, structurally and functionally. The flax seed and plant of Group I can be used for something other than producing oil of Group II, or the products of Groups III and IV, as evidenced by these different claims. In addition, the products of each of Groups II-IV are not required by any of the others. The inventions of Groups I-IV can be independently used and the patentability of one would not render the other obvious or unpatentable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination purposes as indicated is proper.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, 10 the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

15 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM.

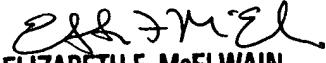
20 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone number for this Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

25 Any inquiry of a general nature or relating to the status of this application should be directed to the CUSTOMER SERVICE TECH CENTER 1600, whose telephone number is (703) 308-0198, or to the Group receptionist whose telephone number is (703) 308-0196.

Serial No. 10/059,080  
Art Unit 1638

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Elizabeth F. McElwain, Ph.D.  
March 21, 2003

  
ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1600